

Docket:	: A.21-01-003
Exhibit Number	: Cal Adv - _____
Commissioner	: Martha Guzman Aceves
Administrative Law Judge	: Daphne Lee
Public Advocates Office	
Witness	: Niamh Murphy



REPORT AND RECOMMENDATIONS ON NON-TARIFF PRODUCTS AND SERVICES

Application 21-01-003

**San Francisco, California
May 25, 2021**

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MEMORANDUM

1 The Public Advocates Office at the California Public Utilities Commission (Cal
2 Advocates) examined requests and data presented by San Jose Water Company (SJWC)
3 in Application (A.) 21-01-003 (Application) to provide the California Public Utilities
4 Commission (Commission) with recommendations that represent the interests of
5 ratepayers for safe and reliable service at the lowest cost. This Report is prepared by
6 Niamh Murphy. Ting-Pong Yuen is Cal Advocates' project lead for this proceeding.
7 Mukunda Dawadi is the oversight Program & Project Supervisor, and Angela Wuerth is
8 the legal counsel.

9 Although every effort was made to comprehensively review, analyze, and provide
10 the Commission with recommendations on each ratemaking and policy aspect of the
11 requests presented in the Application, the absence from Cal Advocates' testimony of any
12 particular issue does not constitute its endorsement or acceptance of the underlying
13 request, or the methodology or policy position supporting the request.

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EXECUTIVE SUMMARY

I. Introduction

This Report presents Cal Advocates’ analysis and recommendation of SJWC’s Non-Tariff Products and Services (NTP&S) for Test Year (TY) 2022 and escalation years 2023 and 2024. NTPS&S are products and services the utility offers that use excess capacity, such as excess labor or multi-purpose real estate, to generate additional revenue that then gets shared between ratepayers and shareholders.

II. Summary of Recommendations

A. Chapter 1: Non-Tariff Products and Services

The Commission should authorize \$1,035,656 in annual NTP&S revenue to be allocated to SJWC ratepayers in Test Year (TY) 2022 and escalation years 2023 and 2024, which is a 22% increase over SJWC’s projection of \$848,379. The Commission should also disallow \$144,152 in total annual SJWC labor expense estimates caused by NTP&S and develop a long-term solution for the Cupertino lease’s labor issue.

CHAPTER 1: NON-TARIFF PRODUCTS AND SERVICES

I. Introduction

Non-Tariff Products and Services (NTP&S) uses excess capacity, such as excess labor or multi-purpose real estate, to generate additional revenue that then gets shared between ratepayers and shareholders. California Public Utilities Commission (Commission) Decision (D.)11-10-034 instituted standardized rules for the treatment of NTP&S and affiliate transactions. NTP&S revenue sources can be classified as active or passive, each with a different ratepayer revenue allocation, as determined in Commission NTP&S Rules.

SJWC identifies seven sources of NTP&S used to generate additional revenue. These seven revenue sources include antenna leases, backflow testing for the South Bay Water Recycling Program (SBWRP), maintenance services for the City of San Jose Municipal Water System, miscellaneous services for the City of San Jose Municipal Water System, Meter Shop testing services, Homeserve contracts, and operations and maintenance (O&M) for the City of Cupertino's water system lease.¹ The City of Cupertino 25-year water system lease expires in 2022.² Appendix A of D.11-10-034 delineates the rules for water utilities regarding NTP&S. These rules supersede D.00-07-018, which came before it.³

II. Summary of Recommendations

The Commission should authorize \$1,035,656 in annual NTP&S revenue to be allocated to SJWC ratepayers in TY 2022 and escalation years 2023 and 2024 which is a 22% increase over SJWC's projection of \$848,379. The Commission should also disallow \$144,152 in annual SJWC labor expense estimates and develop a long-term

¹ Workpaper (WP) 8-16

² Attachment 1-5, City of Cupertino Water System Lease

³ D.10-10-019, pg 83

solution for the Cupertino lease’s labor issues. These two changes benefit SJWC customers by correctly allocating their ratepayer portion of the annual NTP&S revenue that is split between ratepayers and shareholders. SJWC customers are also protected from funding NTP&S activities through rates paid for tariffed water services. Table 1-1 below compares SJWC’s proposed ratepayer share of annual NTP&S revenue for TY 2022 and escalation years 2023 and 2024 with Cal Advocate’s recommended ratepayer share of annual NTP&S revenue. Table 1-2 shows yearly total NTP&S labor expenses that violated the Commission’s NTP&S rules and the average of annual labor expense totals that should be removed from future expense forecasts.

Table 1-1: NTP&S Annual Revenue Ratepayer Share Comparison

SJWC Proposed Revenue	Cal Advocates Proposed Revenue	Cal Advocates Proposal as % of SJWC Proposal
\$848,379	\$1,035,656	122.1%

Table 1-2: Total NTP&S Labor Expense Reduction (\$)

Year	Cupertino Lease	All other NTP&S	Total
2017	\$55,436.12	\$104,722.49	\$160,158.61
2018	\$10,965.85	\$141,511.90	\$152,477.75
2019	\$29,906.29	\$121,643.83	\$151,550.12
2020	\$12,856.85	\$99,566.07	\$112,422.92
Average	\$27,291.28	\$116,861.07	\$144,152.35

III. Discussion

A. NTP&S Revenue Ratepayer Share Calculation

SJWC’s NTP&S revenue ratepayer share calculations inappropriately undercount NTP&S revenues to be shared with customers and are inconsistent with the

Commission's NTP&S rules and D.18-11-025 adopting SJWC's prior GRC settlement. SJWC's calculations use averages to estimate the future revenue of each revenue source under contract. However, SJWC does not use the same number of years to calculate the average of each of SJWC's seven NTP&S revenue sources. Six of SJWC's NTP&S revenue sources use a 5-year average, while one, Homeserve, uses a 2-year average.⁴ The number of years used to calculate the average revenue for each NTP&S should be standardized to 5 years for all revenue sources.⁵ Using a consistent methodology to calculate NTP&S revenues provides a more accurate and transparent revenue forecast. D.18-11-025, which adopted SJWC's previous General Rate Case (GRC) settlement, determined that Homeserve's revenue is passive,⁶ which is not reflected in SJWC's current revenue calculation. The current NTP&S Rule X.C.2 states that ratepayers receive 30% of passive revenue sources. Using SJWC's Workpaper (WP) 8-16 as a template, Cal Advocates standardized the revenue averages to 5 years for all revenue sources and changed Homeserve's ratepayer revenue allocation from 10% to 30% in accordance with D.18-11-025.⁷

SJWC's ratepayer revenue calculation method is also inconsistent with NTP&S Rules because SJWC neglected to allocate the first \$100,000 of total annual NTP&S revenue to ratepayers. NTP&S Rule X.C.5 states:

For those utilities with annual Other Operating Revenue (OOR) of \$100,000 or more, revenue sharing shall occur only for revenues in excess of that amount. All NTP&S revenue below that level shall accrue to the benefit of ratepayers.

SJWC's calculations underestimate the amount of revenue the company should share with its customers and are inconsistent with NTP&S rules. To fix this error, Cal Advocates recalculated the NTP&S revenue that SJWC must share with customers to

⁴ CH 8, WP 8-16

⁵ For new revenue sources that don't yet have 5 years of revenue data, the average should consist of all of the years revenue that are present.

⁶ D.18-11-025, Appendix A, pg 5

⁷ Attachment 1-2, WP 8-16 Adjusted

include the first \$100,000 of revenue sharing, in accordance with the Commission’s NTP&S rules. This correction increases the total ratepayer annual revenue portion from \$848,120 to \$1,035,656.⁸ Calculating the correct NTP&S revenue ratepayer share benefits SJWC customers.

The table below summarizes the NTP&S revenue ratepayer share adjustments for TY 2022 and Escalation Years 2023 and 2024:

Table 1-3: NTP&S Annual Revenue Ratepayer Share Comparison

SJWC Proposed Revenue	Cal Advocates Proposed Revenue	Cal Advocates Proposal as % of SJWC Proposal
\$848,379	\$1,035,656	122.1%

B. NTP&S Labor Hours Reported

SJWC underreported the total amount of employee hours spent on NTP&S labor in its GRC application. SJWC is in violation of NTP&S Rule X.B.3.a, which states:

A utility may only offer on the open market the following products and services:
...

3. Products and services that are offered on a non-tariffed basis (NTP&S) and that meet the following conditions:

a) The NTP&S utilizes a portion of the excess or unused capacity of a utility asset or resource

SJWC is permitted to use excess employee hours to perform NTP&S activities that benefit both SJWC’s customers and its shareholders by generating more revenue to offset SJWC’s operating expenses. SJWC’s GRC application provided some number of NTP&S employee hours worked but failed to include the number of hours related to the company’s Cupertino Operations and Maintenance (O&M) NTP&S agreement. SJWC’s responses to Cal Advocates’ Data Requests included hourly logs of SJWC employees. SJWC’s employees’ hourly logs show that SJWC exceeded the amount and type of labor

⁸ Attachment 1-2, WP 8-16 Adjusted

1 that is permitted for NTP&S activities.² SJWC’s employees’ overtime worked to
2 complete NTP&S labor is disallowed under Commission rules, as it is not excess labor.
3 Additionally, any overtime SJWC labor worked on regulated services as a result of
4 working regular time for NTP&S activities is similarly disqualified because it was not
5 worked in excess of the labor that SJWC requires to function.

6 To reach this conclusion, Cal Advocates tabulated the amount of SJWC’s
7 employees’ reported NTP&S overtime worked. Next, the total overtime worked for each
8 employee was extracted from SJWC’s employee hourly logs and compared to the amount
9 of labor done for NTP&S activities using regular time. If the employee worked any
10 overtime, Cal Advocates extracted and totaled the amount of overtime caused solely by
11 NTP&S activities regular time worked. This was calculated for years 2017 to 2020. The
12 following tables denote the amount of labor that should be reduced from SJWC expenses
13 (in hours and dollars), as it is in violation of Commission D.11-10-034 Rule X.B.3.a
14 which requires that NTP&S activities be performed using solely the excess capacity of a
15 utility’s assets. As the amount of NTP&S labor fluctuates, Cal Advocates used the
16 average of the past 4 years to estimate the amount of labor expenses that should be
17 reduced from labor expense estimations.¹⁰ Cal Advocates found that for every \$1 spent
18 paying regular time NTP&S labor, an expense of about \$0.45 in SJWC overtime labor is
19 incurred.

20 Table 1-4 shows yearly total and average NTP&S hours worked that violated the
21 Commission’s NTP&S rules. Table 1-5 shows yearly total NTP&S labor expenses that
22 violated the Commission’s NTP&S rules and the average of annual labor expense totals
23 that should be removed from future expense forecasts.

² D.11-10-034, p.A-12, section X.B. “A utility may only offer on the open market the following products and services:

1. Existing products and services offered by the utility pursuant to tariff;
2. New products and services that are offered on a tariffed basis; and
3. Products and services that are offered on a non-tariffed basis (NTP&S) and that meet the following conditions:

- a) The NTP&S utilizes a portion of the excess or unused capacity of a utility asset or resource”

¹⁰ 4 years were used instead of 5 because Cal Advocates did not have a full hourly log data set that included overtime worked for SJWC non-NTP&S labor for all of 2016.

Table 1-4: Total Disallowed NTP&S Hours

Year	Cupertino Lease	All other NTP&S	Annual Total
2017	487.25	2390.25	2877.5
2018	252	2988.25	3240.25
2019	717.75	2634	3351.75
2020	256.5	2077	2333.5
Average	428.4	2522.4	2950.8

Table 1-5: Total Disallowed NTP&S Labor Expense (\$)

Year	Cupertino Lease	All other NTP&S	Total
2017	\$55,436.12	\$104,722.49	\$160,158.61
2018	\$10,965.85	\$141,511.90	\$152,477.75
2019	\$29,906.29	\$121,643.83	\$151,550.12
2020	\$12,856.85	\$99,566.07	\$112,422.92
Average	\$27,291.28	\$116,861.07	\$144,152.35

The Commission should reduce SJWC's required revenue annual labor expense estimates by \$144,152.

C. Cupertino Lease O&M

SJWC is using more than just excess capacity employee labor providing O&M services for the Cupertino Lease. The Cupertino Lease is a contract between SJWC and the City of Cupertino wherein SJWC rents Cupertino's water system and provides various O&M services such as system repairs and customer billing.¹¹ As mentioned in Section B above, SJWC is using more than just excess SJWC employee labor to perform its NTP&S, and that cost is being borne by SJWC's customers. Cupertino's current lease

¹¹ Attachment 1-5: City of Cupertino Water System Lease

1 prohibits O&M costs (including labor) from being billed to the City of Cupertino.¹² In
2 order for SJWC to comply with NTP&S Rule X, all the labor provided for the Cupertino
3 O&M must come solely from excess capacity. SJWC is using more than its unused labor
4 capacity to perform Cupertino's O&M. Using this labor asset for Cupertino's O&M can
5 adversely affect the quality and reliability of SJWC's tariffed services by spreading the
6 labor force too thin.

7 A simple comparison between the number of SJWC employees and Cupertino
8 O&M employee equivalents, adjusted for the number of connections in each system is
9 shown in Table 1-6 below:

10 **Table 1-6: Labor ratio comparison 2019**

	Cupertino	SJWC
Employees	2.3 ¹³	221 ¹⁴
Connections	4,488 ¹⁵	219,044 ¹⁶
Employees/Connection	0.0005	0.0010

11
12 The estimated difference in ratios of employees per connection indicates a severe
13 lack of O&M in the Cupertino system. It is unreasonable to assume that SJWC's
14 employees can feasibly perform the O&M of Cupertino's 4,488 connections using solely
15 their excess hours.

16 If the current lease as-is were to be signed today, it would not qualify as an
17 NTP&S revenue source under Rule X.B.3 which states that:

18 Products and services that are offered on a non-tariffed basis (NTP&S)
19 and that meet the following conditions:

20 a) The NTP&S utilizes a portion of the excess or unused capacity of a
21 utility asset or resource;

¹² Attachment 1-5, Section 7.A of Cupertino Lease signed October 1, 1997

¹³ Calculated by dividing the total number of Cupertino O&M hours worked in 2019 by 2,080 hours.
2,080 hours is calculated by multiplying 40 hours/week by 52 weeks/year.

¹⁴ From SJWC 2019 Annual Report, Schedule C-3

¹⁵ Attachment 17, pg 47, 2017 data

¹⁶ Attachment 17, pg 47, 2017 data

1 ...
2 c) The involved portion of such asset or resource may only be used to
3 offer the product or service on a non-tariffed basis without adversely
4 affecting the cost, quality or reliability of tariffed utility products and
5 services...
6

7 SJWC is using more than excess labor capacity to provide the Cupertino Water
8 System with O&M services. Any lease that SJWC signs with the City of Cupertino in the
9 future needs to have provisions to adequately compensate SJWC for the employee hours
10 worked in service of Cupertino's O&M. Until the end of the current Cupertino lease in
11 2022, the Commission should require SJWC to remove any non-excess capacity labor
12 spent in service of Cupertino's O&M from SJWC's required revenue.

13 If the Cupertino Water System Lease is not renewed, the total annual NTP&S
14 revenue should be reduced from \$1,035,656 to \$623,020 after 2022. Removing the
15 Cupertino Water System Lease revenue from the total NTP&S revenue causes this
16 reduction.

17 Additionally, SJWC provided fragmented records of the requested employee labor
18 spent on O&M services for Cupertino and other NTP&S Services. The initial GRC
19 application reports some NTP&S labor but does not include any spent on the Cupertino
20 O&M.¹⁷ Cal Advocates submitted two follow-up DRs,¹⁸ but some of the NTP&S labor
21 data provided was still incomplete for 2015 and 2016. On March 18, 2021, Cal
22 Advocates received an update to the report of 2015 and 2016 NTP&S labor.¹⁹ Cal
23 Advocates' estimates are based on the staggered information provided by SJWC in
24 response to DR inquiries.

¹⁷ Exhibit J – Attachment 18, pg 1207-1285

¹⁸ SJWC Response to DR NM-001 and DR NM-005

¹⁹ SJWC Requested Revision to Q.6 of DR NM-005

IV. Conclusion

The Commission should increase the NTP&S revenue ratepayer share forecast from \$848,379 to \$1,035,656, with the provision that if SJWC's Cupertino Lease is not resigned, the annual revenue ratepayer share forecast should be reduced to \$623,020 after 2022. The Commission should disallow \$144,152 in annual SJWC labor expense estimates, because SJWC's NTP&S labor expenses have exceeded excess labor capacity, a cost which is currently being borne by SJWC's customers in violation of the Commission's NTP&S rules. The Commission should ensure that SJWC's Cupertino Lease, if it is re-signed, contains provisions that adequately compensate SJWC for NTP&S labor provided and does not violate the Commission's NTP&S rules.

Table 1-7 below compares SJWC's proposed annual NTP&S ratepayer share revenue for TY 2022 and escalation years 2023 and 2024 with Cal Advocate's recommended annual NTP&S ratepayer share revenue. Table 1-8 shows yearly total NTP&S labor expenses that violated the Commission's NTP&S rules and the average of annual labor expense totals that should be removed from future expense forecasts.

Table 1-7: NTP&S Annual Revenue Ratepayer Share Comparison

SJWC Proposed Revenue	Cal Advocates Proposed Revenue	Cal Advocates Proposal as % of SJWC Proposal
\$848,379	\$1,035,656	122.1%

Table 1-8: Total NTP&S Labor Expense Reduction (\$)

Year	Cupertino Lease	All other NTP&S	Total
2017	\$55,436.12	\$104,722.49	\$160,158.61
2018	\$10,965.85	\$141,511.90	\$152,477.75
2019	\$29,906.29	\$121,643.83	\$151,550.12
2020	\$12,856.85	\$99,566.07	\$112,422.92
Average	\$27,291.28	\$116,861.07	\$144,152.35

1

2

[END OF CHAPTER]

**ATTACHMENT 1-1: STATEMENT OF
QUALIFICATIONS**

STATEMENT OF QUALIFICATIONS – NIAMH MURPHY

Q1. Please state your name, business address, and position with the California Public Utilities Commission (“Commission”).

A1. My name is Niamh Murphy and my business address is 505 Van Ness Avenue, San Francisco, California 94102. I am a Utilities Engineer in the Water Branch of the Public Advocates Office.

Q2 By whom are you employed and in what capacity?

A2. I am employed by the Commission as a Utilities Engineer within the Water Branch of the Public Advocates Office.

Q3. Please summarize your education background and professional experience.

A3. I graduated from University of Washington with a Master’s degree in Civil Engineering in 2019. In 2016, I graduated from UC Berkeley with a B.S. in Environmental Science and a minor in Energy Resources. I joined the Public Advocates Office Water Branch in 2020.

Q4. What is your responsibility in this proceeding?

A4. I am responsible for providing testimony for Non-Tariff Products and Services, Balancing and Memorandum Accounts, and portions of Plant regarding generators.

Q5. Does this conclude your prepared direct testimony?

A5. Yes, at this time.

ATTACHMENT 1-2: WP 8-16 ADJUSTED

<u>Activity</u>	<u>Current</u> <u>Ratepayer Allocation</u>	<u>Gross Revenue</u> <u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Antenna Leases	30%	\$1,104,277.00	\$1,139,846.00	\$1,161,518.00	\$1,191,391.00
SBWRP Backflow	10%	\$3,088.00	\$0.00	\$0.00	\$0.00
Cupertino O&M	10%	\$3,770,287.00	\$3,653,577.00	\$4,015,693.00	\$3,622,709.00
City of San Jose R&M	10%	\$745,374.00	\$591,418.00	\$533,817.00	\$1,086,997.00
City of San Jose Misc.	10%	\$2,392.00	\$2,416.00	\$2,819.00	\$2,416.00
Meter Testing	10%	\$12,170.00	\$21,540.00	\$10,504.00	\$20,553.00
Homeserve	30%	\$407,516.00	\$470,250.76	\$523,896.74	\$536,351.39
SUM		\$6,045,104.00	\$5,879,047.76	\$6,248,247.74	\$6,460,417.39

Total

* Billing contracts for City of San Jose and Milpitas were not renewed.

SAN JOSE WATER COMPANY
(U-168-W)

NON-TARIFFED BUSINESS
REVENUE ALLOCATION FOR RATEMAKING

Prorated portion of annual \$100,000					
<u>2019</u>	<u>2020</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
\$1,209,861.72	1,289,814	\$18,267.30	\$19,388.28	\$18,589.50	\$18,441.39
\$0.00	0	\$51.08	\$0.00	\$0.00	\$0.00
\$3,316,569.71	3,397,833	\$62,369.27	\$62,145.73	\$64,269.11	\$56,075.46
\$893,174.81	633,787	\$12,330.21	\$10,059.76	\$8,543.47	\$16,825.49
\$1,780.04	0	\$39.57	\$41.10	\$45.12	\$37.40
\$17,240.00	7,440	\$201.32	\$366.39	\$168.11	\$318.14
\$547,916.24	554,108	\$6,741.26	\$7,998.76	\$8,384.70	\$8,302.12
\$5,986,542.52	\$5,882,983.15	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00

(2021-2024)									
		Total Ratepayer Share					(((Gross-prorated)*%)+prorated		
<u>2019</u>		<u>2020</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>5 Year Infl Adjust Average</u>
\$20,209.69	\$21,924.49	\$21,924.49	344,070	355,526	361,468	370,326	377,105	402,291	\$372,329
\$0.00	\$0.00	\$0.00	355	0	0	0	0	0	\$0
\$55,400.42	\$57,756.98	\$57,756.98	433,161	421,289	459,411	412,739	381,517	391,765	\$412,636
\$14,919.71	\$10,773.23	\$10,773.23	85,635	68,196	61,071	123,843	102,745	73,075	\$85,240
\$29.73	\$0.00	\$0.00	275	279	323	275	205	0	\$216
\$287.98	\$126.47	\$126.47	1,398	2,484	1,202	2,342	1,983	858	\$1,770
\$9,152.47	\$9,418.83	\$9,418.83	126,974	146,674	163,038	166,717	170,782	172,826	\$163,464
\$100,000.00		\$100,000.00							
			991,867	994,447	1,046,513	1,076,242	1,034,337	1,040,814	1,035,656

ATTACHMENT 1-3: SJWC RESPONSE TO DR NM-001



SAN JOSE WATER

110 W. Taylor Street
San Jose, CA 95110-2131

January 29, 2021

Mr. Ting-Pong Yuen
Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Re: Response to Data Request NM-001
General Rate Case Application No. 21-01-003**

Dear Mr. Yuen:

Enclosed you will find San Jose Water Company's (SJWC) response to data request NM-001 dated January 13, 2021. The information was prepared by:

Wendy Walker
VP of Finance, Controller
408 279-7980
wendy.walker@sjwater.com

Due to the current shelter-in-place order, SJWC will only provide responses electronically. Hard copies will not be provided.

If you have any questions, please contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'John B. Tang'.

John B. Tang, P.E.
Vice President of Regulatory Affairs
& Government Relations

cc: Niamh Murphy, Public Advocates Office
Angela Wuerth, Public Advocates Office

RESPONSES

1. Please provide the excel version of "Exhibit J - Attachment 17 – Response to MDR II.I.01 CONFIDENTIAL."

Excel files in Attachment 17 Confidential folder are being provided via Kiteworks.

2. Please provide the excel version of pages 1207-1285 of "Exhibit J - Attachment 18 – Response to MDR II.I.02 CONFIDENTIAL."

Excel files in Attachment 18 Confidential are being provided via Kiteworks.

3. Describe how employee hours are recorded for both tariffed and non-tariffed activities. For a hypothetical employee (see page 1276 of Exhibit J - Attachment 18), how were the hours for Non-Tariffed Products and Services (NTP&S) activities accounted for, e.g., timesheets? How was the rest of this employee's time for regulated activities recorded?

Employees charge their time to the appropriate account code when they are completing their timesheets in ADP. All of the general ledger accounts for labor are accessible in ADP. A download of the hours, by account, can be generated at any time.

4. Has the method of recording tariffed and non-tariffed employee hours changed from the last General Rate Case? If yes, please describe the changes.

There has been no change.

5. Describe how NTP&S expenses (including direct expenses, indirect expenses and taxes) are accounted for and recorded.

- a. Are separate general ledger accounts used for tariffed and non-tariffed activities?
- b. If separate general ledger accounts are used, please provide a list of the account numbers and descriptions used for the non-tariffed activities.

Yes, separate general ledger accounts are utilized for tariffed and non-tariffed activities.

Please see the Attachment 1 for the list Non-tariffed Chart of Accounts.

6. Describe how affiliate expenses (including direct expenses, indirect expenses, and taxes) are accounted for and recorded. Please provide a list of account numbers and descriptions used for affiliate transactions.

Direct expenses are coded to the general ledger accounts established and provided under question #5. Indirect expenses are calculated annually through the expense transfer study for the City of Cupertino lease and the labor burden study that applies costs associated to labor (employer payroll taxes, benefits, etc) charged to non-tariff activities.

See the list of accounts provided under question #5.

7. Describe how expenses and revenue related to the lease between the City of Cupertino and San Jose Water Company dated October 1, 1997 are accounted for and recorded.

In our accounting system, JDE Enterprise 1, the first level of the general ledger hierarchy is the company code. The City of Cupertino is company code 101. San Jose Water Company is company code 100. This clearly establishes a separate chart of accounts for both.

END OF RESPONSE

ATTACHMENT 1-4: SJWC RESPONSE TO DR NM-005



SAN JOSE WATER

110 W. Taylor Street
San Jose, CA 95110-2131

February 22, 2021

Ting-Pong Yuen
Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Re: Response to Data Request NM-05
General Rate Case Application 21-01-003**

Dear Mr. Yuen:

Enclosed you will find San Jose Water Company's (SJWC) response to data request NM-005 dated February 12, 2021. The information was prepared by:

Ann Lindahl
Regulatory Affairs Manager
408-642-0359
ann.lindahl@sjwater.com

Due to the current shelter-in-place order, SJWC will only provide responses electronically. Hard copies will not be provided.

If you have any questions, please contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'John B. Tang'.

John B. Tang, P.E.
Vice President of Regulatory Affairs
& Government Relations

cc: Niamh Murphy, Public Advocates Office
Munkuda Dawadi, Public Advocates Office
Angela Wuerth, Public Advocates Office

RESPONSES

1. What is the total number of overtime hours worked by SJWC employees for the years 2015-2020? What is the O&M overtime worked by SJWC employees for the years 2015-2020? Please fill out the chart below.

	Total Overtime (hours)	O&M Overtime (hours)
2015	22,449.75	15,103.25
2016	24,393.00	16,759.75
2017	24,854.50	17,891.25
2018	26,828.00	21,634.50
2019	28,047.00	24,485.00
2020	28,578.75	24,186.75

2. Provide the record of hours worked by SJWC employees and independent contractors performing labor for anything related to the Cupertino water system, for each year from 2015-2020. The format should be entries in timesheets converted into Excel, like the other NTP&S recorded hours provided in SJWC's response to DR NM-001.

SJWC Response: Please see Excel file Confidential Response to DR NM-005 R.2 Cupertino Labor 2015-2020.

3. Provide a breakdown of all NTP&S gross revenue, expenses, and net revenue for each year from 2015-2020 for each of the following NTP&S revenue sources: Antenna Leases, SBWRP Backflow, Cupertino O&M, City of San Jose R&M, City of San Jose Misc., Meter Testing, and Homeserve. For each of the revenue sources, please provide separately the share of revenues in percentages to SJWC's ratepayers and shareholders. For the share of revenues to the SJWC's ratepayers, please identify whether it is percent of gross revenue or net revenue.

SJWC Responses: Please see folder Confidential Response to DR NM-05 R.3 for the breakdown of all NTP& S gross revenue and expenses for 2015-2020. Please see WP 8-16, column B for the percentage allocation applied to each activity. In accordance with D.00-07-018, for all activities except the Cupertino lease, the SJWC's ratepayers percentage is applied to gross revenue. For the Cupertino lease, the SJWC's ratepayers percentage is applied to revenue after water production costs are subtracted.

4. Provide the annual income statements for the Cupertino lease water system for each year from 2015-2020.

SJWC Responses: Please see the attached file Response DR NM-005 R.4 CUP Income Stmt-2015-2020.

5. When calculating the NTP&S revenue for the Cupertino lease, what types of expenses are removed from the gross revenue as pass-through costs? List the types and amounts of removed expenses (i.e., postage, purchased water, etc.) for the Cupertino lease for each year from 2015-2020. If there are any types of expenses that are grouped as "Other" or "Miscellaneous," please break them down further for identification.

SJWC Response: Incremental Costs of water production expenses (purchased water and power) and property and franchise taxes are subtracted from the Cupertino revenue to determine the amount eligible to share with SJWC ratepayers.

6. Refer to SJWC's response to DR NM-001, response 3: "Employees charge their time to the appropriate account code when they are completing their timesheets in ADP. All of the general ledger accounts for labor are accessible in ADP. A download of the hours, by account, can be generated at any time."

a. Provide a download of the hours (including overtime) by account (including but not limited to regular SJWC operations, NTP&S operations, and Cupertino lease related operations), in Excel, for

each year from 2015-2020 for the following employees, identified by file ID number:

i. 010006

ii. 010352

iii. 011368

iv. 011513

v. 011268

SJWC Response: Please see the folder Confidential Response to DR NM-005 R.6 and use the Find function to locate the above reference employee information.

b. Provide a summary of the hours (including overtime hours) by account (including but not limited to regular SJWC operations, NTP&S operations, and Cupertino lease related operations), in Excel, for total hours worked by all SJWC employees in each account, for each year from 2015-2020.

SJWC Response: Please see the folder Confidential Response to DR NM-005 R.6.

END OF RESPONSE

1

2

**ATTACHMENT 1-5: CITY OF CUPERTINO WATER
SYSTEM LEASE**

**ATTACHMENT
MDR II.I.02**

City of Cupertino Water System Lease

AGREEMENT FOR LEASE OF REAL PROPERTY (WATER SYSTEM)

THIS AGREEMENT FOR LEASE OF REAL PROPERTY (WATER SYSTEM) ("Lease") is entered into as of October 1, 1997, between the CITY OF CUPERTINO, (hereinafter referred to as "City"), and SAN JOSE WATER COMPANY, a California corporation ("Lessee").

WITNESSETH:

WHEREAS, City provides water service to approximately 4200 metered customers in the service area described in Exhibit A attached hereto (as such service area may change from time to time in accordance with this Lease, the "Service Area"); and

WHEREAS, City is the owner of certain real property, easements and rights of way and those certain pipes, mains, pumps and appurtenant facilities (including without limitation buildings, pump houses, sheds and other structures) constituting all of City's water system (the "Water System") within the Service Area and more specifically described in Exhibit B attached hereto; and

WHEREAS, City desires to lease the Water System to Lessee, and Lessee desires to lease the Water System from City, for the period and upon the other terms and conditions set forth herein;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for good and valuable consideration, the receipt and adequacy of which the parties hereby acknowledge, City and Lessee hereby agree as follows:

Section 1. Lease of Water System.

City hereby leases to Lessee, and Lessee hereby leases from City, the Water System as described on Exhibit B. The Water System is leased in an "as is" condition. Neither City nor any of its agents has made any representation or warranties with respect to the Water System except as specifically set forth in this Lease. City agrees, however, to provide Lessee with copies of maps, drawings, plans and specifications of the present system, along with customer service and account records in a form agreeable to both parties, all at least thirty (30) days prior to the Closing Date defined below. Lessee agrees to use its best efforts keep all customer information confidential, whether received from City or developed during the Term of the Lease.

Section 2. Term of Lease.

The term of the Lease of the Water System shall be twenty-five (25) years unless terminated earlier as provided in this Lease (the "Term"). The Term of this Lease shall commence on October 1, 1997 (the "Closing Date"). City and Lessee shall jointly read the meters of all customers in the Service Area within 15 business days preceding (a) the Closing Date and (b) the expiration or termination of this Lease. All monies for services rendered and water sold prior to the Closing Date meter readings and after the expiration or termination of the Lease meter readings shall be the property of the City. All monies for services rendered and water sold after the Closing Date meter readings and through the expiration or termination of the Lease meter reading shall be the property of the Lessee. Accrued expenses will be allocated in a similar manner.

Section 3. Use of Water System.

Subject to the provisions of this Lease, Lessee agrees to use the Water System for the purpose of furnishing potable water service to City customers. Lessee agrees to furnish water, including water service for fire protection to all customers in the Service Area in accordance with the applicable rules relating to service at all times during the term of the Lease.

Notwithstanding the above, Lessee shall not serve customers outside the water system without City's written permission.

Lessee has no authority to and shall not retire, sell, transfer, convey, or encumber any real property of the Water System. Lessee has no authority to retire, sell or otherwise dispose of any personal property of the Water System without prior permission of the City.

City retains the right to utilize or continue to utilize any portion or portions of the Water System, including easements, tanks, buildings, and appurtenances for any legal purpose which does not interfere with Lessee's use of the Water System to furnish potable domestic water service to City customers.

Section 4. Title

All Capital Improvements shall be deemed part of the Water System and title to such Capital Improvements shall immediately vest in City. Any other property added to or incorporated into the Water System by Lessee pursuant to its maintenance obligations under this Lease or which are added by new developments shall be deemed part of the Water System and title to such property shall immediately vest in City. Lessee shall not own the Water System or any part thereof or any interest therein.

Section 5. Concession Fee.

As partial consideration for this Lease, Lessee agrees to pay the City a one time concession fee (the "Concession Fee") of \$ 6.8 million upon the execution of this Lease. The Concession fee is not a security deposit and is not refundable.

Section 6. Base Rent.

As additional consideration, Lessee agrees to pay to City as annual rental (hereinafter called the "Base Rental") for the use of the Water System, the sum of \$1.00/year. The Base Rental shall be paid to City on the basis of City's fiscal year which commences July 1st and ends on June 30th.

Section 7. Operation of Water System

A. Repair, Maintenance and Operation. Lessee shall at its own expense throughout the Term of this Lease, undertake any utility plant addition, betterment, replacement, improvement, repair and perform routine and emergency maintenance of the Water System in accordance with customary utility practices and shall operate the Water System and pay all costs and expenses of operating the same (including the costs of all utilities, plant improvements, water and all public charges, taxes and assessments of any nature whatsoever), it being understood and agreed that City shall be under no obligation to pay any cost or expense of any kind or character in connection with or related to the management, operation, improvement, repair or maintenance of the Water System during the Term of this Lease.

B. Customer Services Obligations: rendering monthly or bi-monthly bills to all customers receiving water service in the Service Area; payment processing; responding to customer inquiries on water service, bills, leaks or other concerns; collecting bills; processing applications for new or transfer of service; collection of customer deposits for new service; collection of construction meter deposits; and investigation of customer complaints.

C. Emergency Service Obligations: maintaining twenty-four (24) hour on-call response to emergency calls or customer inquiries; providing an emergency or natural disaster operations plan; maintaining an emergency communications system; providing or having access to equipment required to perform emergency repair work to vital system equipment and water mains; including evaluating and if necessary providing emergency diesel powered back up generator at critical pumping stations.

D. Water Quality Testing Obligations: performing, or causing to be performed, by a State of California certified laboratory, any and all water sampling, analysis, testing and reporting as required for water sources, distribution mains or customer premises, testing and reporting as required for water sources, distribution mains or customer premises, by the U.S. Environmental Protection Agency, State of California Department

of Health Services and Office of Drinking Water and the County Environmental Health Department or acts of the U.S. Congress or California Legislature; scheduling and collecting water samples to test for microbiological, inorganic and organic constituents; transportation to certified lab; preparation of monitoring plans; sample collection training; reporting to appropriate regulator(s); record keeping; analysis interpretation; special or emergency sample collection and analysis emergency notification to affected customers, if required; preparation and distribution of any and all published and distributed customer reports on water quality; new well or water source sampling and analysis; response to customer inquiries on water quality; coordination of cross-connection control and potential contamination issues; conducting annual system survey with California State Department of Health Services; obtaining permits and compliance with appropriate air district; providing hazardous materials control program, and ensuring all operator certification is in compliance with State and Federal requirements.

E. Other Service Obligations: implement a Water Conservation or Waste Water program; maintain distribution system maps and plat maps; prepare any required urban water management plans; and in general, to do all such acts and perform all such services as required to operate the Water System in a manner similar to that in which it operates its own district systems, subject; however, to the provisions of this Lease.

F. Reports: Lessee shall provide City written reports, in a form suitable to both parties, related to Lessee's operation and maintenance of the Water System, as described herein. The frequency and contents of the reports shall be as follows:

(1) Annually: summary of extraordinary maintenance, capital improvements, developer installations with job description, percentage of completion and pertinent comments relative to the project, service and complaint report with listing of customer complaints and inquiries, reason for customer contact and resolution of the matter; water quality analysis of microbiological testing.

(2) Periodically: any other report or information that is reasonably requested by City in connection with the operation and maintenance of the Water System.

G. General Operation: Unless inconsistent with the specific terms of this agreement, Lessee shall operate the Water System according to the procedures and administrative rules by which it operates its other water systems in the City of Cupertino.

Section 8. Rates and Charges.

Lessee shall propose to City reasonable rates and charges that Lessee will impose for water service to be delivered to the customers served by the Water System. Such rates shall require approval by City, which approval shall not be unreasonably withheld. Any disapproval shall state the reasons therefor. In determining reasonable rates and charges, City shall consider all relevant information, including the California Public

Utilities Commission approved rates in similar, nearby municipalities. Lessee may ask City to approve increases in rates from time to time.

City shall act on all requests for rate increases within sixty (60) days of receipt of the request. In cases of natural disaster, other emergencies or acts of God, City recognizes that extraordinary rate relief on an expedited basis may be necessary and City agrees to expeditiously approve any such reasonably requested rate relief. In the event City does not act on any requested rate relief either within the 60 day period or on a expedited basis, as the case may be, and such rate relief is subsequently approved or ordered, the water rates and charges shall be adjusted to subsequently recover from customers over a reasonable period of time such amounts as are necessary to place Lessee in the same position it would have been had the rates been in effect from and after the end of such 60 day period.

Notwithstanding the foregoing, Lessee may upon written notice to the City, pass through to customers in the Service Area in a manner substantially similar to that permitted by the California Public Utilities Commission any increase or decrease in the cost of water or power (to the extent not already reflected in rates), as well as any new City imposed fees, charges, taxes, license or permit fees, so long as Lessee promptly passes through in a manner substantially similar to that permitted by the California Public Utilities Commission any decreases in water or power costs. Lessee shall, at City's request, provide City with any information which may reasonably request documenting any changes up or down in the cost of water or power. Lessee may also impose conservation or rationing penalties on those customers exceeding their allocations, in the event of mandatory water rationing involving penalties imposed by the Santa Clara Valley Water District.

In the event, that rates or surcharges are reduced by order of the P.U.C or voluntarily by Lessee in areas of the City, other than in the Service Area of the Lease, the Lessee shall forthwith reduce its rates or surcharges within the Service Area of the Lease by the same percentage.

A. Phase-in Rate and Structure

Should Lessee's rates and charges be higher than that of City's at the time of Closing Date, Lessee will perform a conversion of rate structure and phase-in rates and charges over a three year period as follows.

(1) Rate Structure Conversion. Beginning in January 1998 Lessee will convert the City's inverted rate structure to Lessee's rates by taking the revenue generated by the rates excluding charges and other revenue and computing an equivalent rate that would generate the same amount of revenue.

(2) Phase-in Period. Beginning in January 1998 Lessee will have new rates and charges established by computing the differences between revenue generated using

current Lessee rate and that of the new rate structure computed above and dividing said difference by three years yielding a rate increase allowed annually for the next three years starting on January 1998 and concluding on January 2000 thereby completing the transition period. The charges will be changed in the same manner by taking the difference between the City's rates as established on September 1992 and the Lessee's charges for the same period and dividing by 3 years to yield the annual increase which will begin on January 1998 and end on January 2000, thereby completing the transition period.

B. No charge will be made for water delivered to Cupertino fire department facilities. No charge will be made for fire fighting activities. All other municipal properties using water service will be charged regular rates.

C. In the event of mandatory water rationing imposed by the Lessee, the Santa Clara Valley Water District or any other authorized public utility and other authorized public authority and to the extent allowed by law, Lessee may impose water conservation, mandatory water rationing and rationing penalties on those City customers exceeding rationing allocations.

Section 9. Evaluation of System/Arbitration

Lessee, upon written request of City or City's agent, shall permit City or City's agent to conduct a comprehensive inspection of the Water System, including, but not limited to, field inspections, maintenance records and reports, customer complaints, capital improvement installations, schedules, and plans, in order to assess the condition of the Water System.

In the event that City determines that all or part of the Water System is not being operated or maintained in accordance with customary utility standards, City shall provide written notice to Lessee describing the deficiencies which City wishes to be corrected. Lessee, shall within sixty (60) days thereafter, file with City its written response describing which deficiencies Lessee agrees are valid together with a plan to correct said deficiencies. Failure of Lessee to provide said written response within said period shall be deemed by City as an admission that said deficiencies exist and City may through an action for specific performance or other legal action compel Lessee to perform the work necessary to correct said deficiencies.

In the event that Lessee, in its written response to City disagrees with any or all of the deficiencies described in City's notice or in the event that City does not agree to the plan for deficiency corrections, then, in that event, the parties shall meet in good faith, in an attempt to resolve all issues.

In the further event that agreement cannot be reached between the parties or any or all issues, then the parties agree to submit the unsolved issues to arbitration under the

rules of the American Arbitration Association or such other association as selected by the Presiding Judge of the Santa Clara County Superior Court, State of California.

Section 10 Water Supply.

Lessee will perform and honor all water supply contracts executed by City and presented to Lessee prior to the Closing Date. Any bills or invoices received by the City pursuant to such contracts for water delivered after the closing Date shall be promptly forwarded to Lessee for payment. Lessee has no right to terminate any such contract or to renew any such contract for more than 12 months without the express written permission of the City. If assignment or transfer of any water right or contract is deemed necessary by either Lessee or City, City will cooperate with Lessee in completing such assignment or transfer for the duration of the Lease.

Lessee shall not modify or take water supply wells out of permanent service without the express written permission of the City's Director of Public Works.

Section 11. Customer Billing and Collections.

A. Lessee shall bill and collect from customers receiving water through the Water System on the basis of the rates approved by City pursuant to Section 8, as adjusted for any pass-through adjustments permitted or required by the provisions of Section 8, and shall own, keep and retain all proceeds from such collections as the sole property of Lessee. Lessee shall propose payment and credit rules substantially similar to those imposed by Lessee in similar adjacent localities, and more particularly to customers served by Lessee in other parts of the City, with such modifications as City approves, and City shall approve such rates if they are reasonable and comply with all provisions of law applicable to municipality owned water systems. Any amendments thereto shall be submitted to City for approval.

Lessee reserves the right to bill each customer on a monthly or bi-monthly basis, in the discretion of Lessee.

B. To the extent required by law, Lessee shall bill and collect on behalf of City from customers receiving water through the Water System any additional amounts which City may assess as a utility user's tax on such customers and shall promptly pay all such amounts to City.

C. City agrees to cooperate with Lessee in collection of unpaid/delinquent accounts. In doing so, City shall not be obligated to pursue collection on behalf of the Lessee of any such amounts unpaid by customers.

D. Transition Periods: the meters of all customers in the Service Area shall be read (jointly unless City and Lessee agree otherwise) in accordance with the schedules set by both the City and Lessee. All monies received by either City or Lessee pertaining to

water service furnished prior to the final billing shall be and remain the property of City. All monies received by either City or Lessee pertaining to water service furnished during the Term shall be and remain the property of Lessee and, to the extent received by City, shall be accounted for and paid over to Lessee with reasonable diligence; provided, however, upon expiration of the Term or termination of this Lease, the amounts then due and the amounts due through such date by all customers shall be calculated and, in lieu of collection and retention by Lessee, Lessee shall be promptly paid such amount by City minus a reasonable amount for bad debts based on the collection history of the customers in the Service Area.

Section 12. Insurance.

A. Obligations of Lessee. During the term of this Lease, Lessee at its own cost and expense shall maintain insurance, issued by a carrier or carriers acceptable to City, as follows:

(1) Commercial general liability insurance in the single limit amount of not less than \$5,000,000, written on an occurrence basis. Such insurance shall include coverage for injury (including death) or damage to persons and/or property arising out of the operations of Lessee pursuant to this Lease. The policy shall include coverage for liability assumed under this Lease for personal injury, property damage and all other insurable claims as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease.

(2) Workers' compensation insurance, or a certificate of self-insurance, insuring against liability under the Workers' Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such insurance shall fully cover all persons employed by Lessee in connection with its operations under this Lease for claims of death or bodily injury arising in connection with their employment by Lessee pursuant to its operations under this Lease.

(3) Automobile (vehicle) liability insurance on an occurrence basis for bodily injury and/or property damage in a single limit amount of not less than one million dollars (\$1,000,000).

B. All policies of insurance shall contain an endorsement in favor of City and its officers, agents and employees listing them as additional insureds.

C. The parties shall periodically review the insurance required hereby for the purpose of agreeing on increases in the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation.

D. All insurance shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California and reasonably acceptable to City.

E. All policies of insurance issued by the respective insurers shall provide that such policies shall not be canceled or materially changed without at least thirty (30) days' prior written notice to Lessee and to City. Copies of such policies shall be deposited with City, together with appropriate evidence of payment of the premiums therefor, prior to the Closing Date. Copies of all renewed or new policies, together with evidence of payment, shall likewise be deposited with City prior to expiration dates of expiring or non-renewed policies.

F. The limits of insurance required by this Lease or as carried by Lessee shall not limit the liability of Lessee nor relieve Lessee of any obligation hereunder.

G. Lessee shall cause each insurance policy obtained by it to provide that the insurance company waives all rights of recovery by way of subrogation against City in connection with any damage covered by any policy.

Section 13. Liens and encumbrances.

City agrees to keep the Water System and Groundwater free and clear of all liens, security interests and encumbrances except for those consented to by Lessee. Lessee agrees to keep the Water System and Groundwater free and clear of all liens, security interests and encumbrances, except for those consented to by the City.

Section 14. Surrender Upon Expiration or Termination.

Upon expiration or termination of this Lease, Lessee agrees that it shall surrender to City the Water System in good order and condition and in a state of repair that is consistent with prudent use and maintenance in accordance with customary utility standards.

Section 15. Default and Remedies.

A. The occurrence of any of the following shall constitute a default by Lessee:

(1) If Lessee fails to make any payment to City or to any third party required by this Lease as and when due, or to obtain and maintain any insurance required by this Lease, where such failure continues for ten days following receipt of written notice from City specifying the failure;

(2) If Lessee fails to perform any of its other covenants or agreements herein contained, where such failure continues for thirty days following receipt of written notice from City specifying the failure;

(3) Notwithstanding subsection (2) above, if a failure to perform cannot feasibly be cured within thirty days, for example, a major repair, if then Lessee fails to commence and diligently proceed toward full performance of the cure within thirty days following receipt of written notice from City specifying the failure, or if Lessee fails to complete such performance within a reasonable time; or

(4) (a) If Lessee is or becomes bankrupt or insolvent or makes any general arrangement or assignment for the benefit of creditors; (b) if Lessee becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 90 days); (c) if a trustee or receiver is appointed to take possession of substantially all of Lessee's assets or of Lessee's interest in this Lease and possession is not restored to Lessee within 60 days; or (d) if a writ of attachment or execution is levied on, or there is a judicial seizure of, substantially all of Lessee's assets or of Lessee's interest in this Lease and such seizure is not discharged within 60 days.

B. If City shall default in the performance of any of its covenants or agreements contained herein and such default shall continue for a period of thirty days after receipt by City from Lessee of written notice specifying the nature of the default, then Lessee may at its option, upon 30 days written notice, cancel and terminate this Lease. In the case of a default which cannot feasibly be cured within 30 days, if City fails to commence performance and diligently proceed toward full performance within 30 days after receipt of notice by Lessee of City's failure to perform or fails to complete performance within a reasonable time thereafter, Lessee may, upon 15 days notice, terminate this Lease.

C. In any action brought by the City in a court of competent jurisdiction to enforce the provisions of this Lease or for monetary damages for its breach, the City, if successful, shall recover, in addition to any monetary damages, its litigation costs, including reasonable attorney's fees.

D. City shall have the following remedies if Lessee commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law or provided for elsewhere in this agreement.

(1) Lessee's Right to Possession Not Terminated. In the event of a default by Lessee, during the continuance of the default and for so long thereafter as any damages or other sums payable by Lessee in connection with such default remain unpaid, City can continue this Lease in full force and effect, and the Lease will continue in effect as long as City does not terminate Lessee's right to possession, and City shall have the right to collect the rent when due. In the event that Lessee ceases to operate the Water System, City can enter the Water System and relet the Water System and the Groundwater, or any part of it, to third parties for Lessee's account. Lessee shall be liable immediately to City for all costs City incurs in reletting the Water System and the Groundwater. Reletting can be for a period shorter or longer than the remaining Term of

this Lease. Lessee shall pay to City the rent due under this Lease on the dates the rent is due, less the rent City receives from any reletting. No act by City allowed by this section shall terminate this Lease unless City notifies Lessee that City elects to terminate this Lease.

(2) Termination of Lessee's Right to Possession. In the event of a default by Lessee, during the continuance of the default and for so long thereafter as any damages or other sums payable by Lessee in connection with such default remain unpaid, City can terminate Lessee's right to possession of the Water System and the Groundwater at any time. No act by City other than giving formal written notice to Lessee shall terminate this Lease. Acts of maintenance, efforts to relet the Water System and the Groundwater or the appointment of a receiver on City's initiative to protect City's interest under this Lease (other than the appointment of a receiver to perform all of Lessee's obligations hereunder) shall not constitute a termination of Lessee's right to possession. On termination, City has the right to recover from Lessee any amount necessary to compensate City for all detriment proximately caused by Lessee's default.

(3) City's Right to Cure Lessee's Default. City, at any time after Lessee commits a default, can cure the default at Lessee's cost. If City, at any time, by reason of Lessee's default, pays any sum or does any act that requires the payment of any sum, the sum paid by City shall be due immediately from Lessee to City at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by City until City is reimbursed by Lessee. The sum, together with interest on it, shall be additional rent.

E. Notwithstanding any provision of this Section 16 to the contrary, if a default or failure to perform by Lessee poses a threat to public health or safety, City shall so notify Lessee, and if Lessee fails to take corrective action within the time specified in such notice, City may enter the Water System and take all necessary action at Lessee's expense. Lessee shall promptly reimburse City for its costs.

Section 16. Assignment.

Lessee agrees not to assign this Lease or sublet the Water System or any portion thereof without the consent of City, which consent shall not be unreasonably withheld; provided, however, that City's consent shall not be required in connection with any assignment by Lessee of all of its rights and obligations hereunder to an affiliated company which is controlled by, controls, or under common control with Lessee.

Section 17. Discharge of Liens.

Lessee agrees to pay and discharge all claims for materials, parts, labor, water, power and other consumables and supplies furnished at Lessee's instance or request upon or to the Water System and to keep the Water System free and clear of all liens resulting from such claims. City agrees to pay and discharge all claims and obligations for

materials, parts, labor, water, power and other consumables and supplies furnished at City's instance or request upon or to the Water System prior to the commencement of the Term of this Agreement.

Section 18. Indemnity.

Lessee agrees to hold City, and its officers, agents and employees, free and harmless of and from, and to defend, indemnify, and protect City, and its officers, agents and employees, against all liability, loss, claims, demands, damage, expense, costs (including, without limitation, reasonable attorneys' fees and all costs and fees of litigation and its threat) of any kind or nature arising out of or in any way connected with the Lease or Lessee's performance or obligations under this Lease to the maximum extent permitted by Law. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term hereof or by reason of Lessee's occupancy of the Water System. Without in any way limiting the foregoing, Lessee shall be solely responsible for, and agrees to defend and indemnify City and hold City harmless for any third party claim or action challenging the validity of this Lease. In the event this Lease is declared invalid, Lessee waives any claim it may have against City in connection therewith.

City agrees to hold Lessee, and its officers, agents and employees, free and harmless of and from, and to defend and indemnify Lessee, and its officers, agents and employees, against all liability, loss, claims, demands, damage, expense, costs (including, without limitation, all costs and fees of litigation and its threat) of any kind or nature arising from claims by third parties or governmental agencies and resulting from negligence, gross negligence, recklessness or willful misconduct by City in connection with City's ownership or operation of the Water System occurring or accruing prior to the Closing Date.

Section 19. California Law.

This Lease shall be governed by the laws of the State of California.

Section 20. Notices.

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party; if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

City: City of Cupertino, City Clerk
10300 Torre Avenue
Cupertino, California 95014

Lessee: San Jose Water Company
374 West Santa Clara Street
San Jose CA 95196

or at such other address as either party shall later designate for such purpose by written notice to the other party. Mailed notice shall be deemed given on the date of delivery shown on the receipt card.

Section 21. Waiver.

The waiver by City of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof. The waiver by Lessee of any breach by City of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 22. Representation.

City hereby represents and warrants to Lessee that the City owns the Water System free and clear of any and all liens, security interests and encumbrances.

Section 23. Nondiscrimination.

Lessee covenants by and for itself, its officers and assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of sex, race, color, creed, national origin, ancestry, religion, citizenship status, age, marital status, medical condition, mental or physical disability, sexual orientation, veteran status or any other characteristic protected by federal or state law or local ordinance in the leasing, transferring, use, or enjoyment of the Water System nor shall Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation.

Section 24. Counterparts.

This Lease may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Lease.

Section 25. Merger and Modification

This Lease and bid documents related thereto set forth the entire agreement between the parties with respect to the subject matter hereof, and supersedes all other oral or written provisions. This Lease may be modified or terminated only in a writing signed by all parties.

Section 26. Taxes and Assessments: Possessory Interest.

Lessee shall pay all taxes, assessments, fees, levies, charges, license or permit fees and other governmental charges of any kind or nature which are or may be at any time or from time to time during the Term of this Lease levied, charged, assessed or imposed upon or against the Water System or the Groundwater or the leasehold estate created hereby or which may be imposed upon any taxable interest of Lessee acquired pursuant to the Lease. Without limiting the generality of the foregoing, Lessee acknowledges that this Lease may create a possessory interest which may be subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest. Any such tax shall be the sole responsibility of Lessee.

Section 27. In-Lieu Franchise Fees

In addition to all other considerations described in this Lease, Lessee shall pay City during the term of this Lease, an in-lieu franchise fee equal to the franchise fee charged to Lessee by the City for its other water system existing within the City (and which is not part of this Lease) as prescribed by Title 6 of the City's ordinance code.

Section 28. Attorneys' Fees.

If any party to this Lease commences legal proceedings or arbitration to interpret this Lease, to enforce any of its terms or for damages for its breach, the prevailing party shall be entitled to recover reasonable attorneys' fees.

Section 29. Net Lease.

This Lease shall be deemed and construed to be a "net lease" and Lessee hereby agrees that the rental provided for herein shall be an absolute net return to City free and clear of any expenses, charges or setoffs.

Section 30. Compliance with Law.

Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole cost and expense, diligently and in a timely manner, comply in all material respects with all "Applicable Law," which term is used in this Lease to include all laws, rules, regulations, ordinance, directives, covenants, easements and restrictions of record, permits, and requirements of any applicable fire insurance underwriter or rating bureau, relating in any

manner to the Water System or the Groundwater (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Water System or the Groundwater, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance or storage tank, now in effect or which may hereafter come into effect, and whether or not reflecting a change in policy from any previously existing policy. Lessee shall notify City in writing (with copies of any documents involved) of any threatened or actual claim, notice, inquiry, citation, warning, complaint or report pertaining to or involving failure by Lessee, the Water System or the Groundwater to comply with any Applicable Law.

Section 31. Hazardous Substances.

A. Lessee will not cause or permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of Hazardous Substance (define below) on, in, under, or from the Water System or the Groundwater or any portion of it in violation of Applicable Laws. If Lessee does cause or permit any release or disposal of any Hazardous Substance on, in, or under the Water System or any portion of it, Lessee, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove the Hazardous Substance to the complete satisfaction of City and other appropriate governmental authorities. Lessee shall promptly notify City of any release or disposal (of which Lessee has knowledge or becomes aware) of any Hazardous Substance on, in, under or from the Water System or the Groundwater.

B. Lessee agrees to indemnify, defend (with counsel reasonably acceptable to City) and hold City and City's officers, agents and employees free and harmless from and against, all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claims, or proceeding) that may at any time be imposed upon, incurred by, asserted, or awarded against City in connection with or arising from or out of:

(1) any Hazardous Substance, on, in, under, or affecting all or any portion of the Water System or the Groundwater, excluding any Hazardous Substance released, generated or disposed by City;

(2) any breach of any covenant or agreement of Lessee contained or referred to in this section;

(3) any violation or claim of violation by Lessee of any Applicable Law;
or

(4) the imposition of any lien for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release

of Hazardous Substance, excluding any Hazardous Substance released, generated or disposed by City.

The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term hereof or by reason of Lessee's occupancy of the Water System and the Groundwater.

C. For purposes of this Lease, "Hazardous Substance" means any substance, material or waste which is defined as "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste" or similar term under any provision of any federal, state or local law and includes, without limitation, hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof.

Section 32. City's Access.

City and City's agents shall have the right to enter the Water System at any time in the case of an emergency, and otherwise at reasonable times and on reasonable prior notice for the following purposes (i) to determine whether the Water System is in good condition as required by this Lease and whether Lessee is complying with its obligations under this Lease, (ii) to serve, post or keep posted any notices required or allowed by law or under this Lease, and (iii) as City may otherwise reasonably deem necessary.

Section 33. Execution

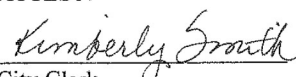
This Lease is effective upon full execution. It is the product of negotiation and therefore shall not be construed against any party.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

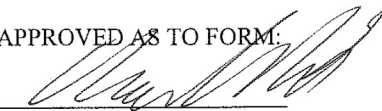
CITY OF CUPERTINO

By: 
Mayor

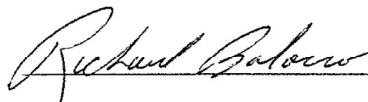
ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

LESSEE: SAN JOSE WATER COMPANY


VICE-PRESIDENT